

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 27, 1999 at 9:00 A.M., in Room 437 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jodi Pauley, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 36, 1/22/1999; SB 232,  
1/22/1999; SB 236, 1/22/1999  
Executive Action: None

#### **HEARING ON SB 232**

**Sponsor:** SEN. BOB DEPRATU, SD 40, Whitefish

**Proponents:**

George Bennett, MT Bankers Assoc.

**John King, First Security Bank of Kalispell, MT Independent Bankers**

**Bob Pyfer, MT Credit Union League**

**Don Bennett, First Citizens Bank**

**Doug Morton, Bankwest**

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. BOB DEPRATU, SD 40, Whitefish,** read the title of the bill. He said this bill is designed to help the banking industry and the business community. He said there has been an uncertainty on what "action" means. This concern comes from when a debt is secured by real estate mortgage under Title 71 and personal property under the Universal Commercial Code. Court cases that arose in California between Title 71 and the UCC have become uncertain because of the lack of assurance of the scope and meaning of the word "action." This bill addresses the vagueness as to the scope and meaning of the term action by specifically addressing a new subsection which sets forth what the term action does not include. There are 18 terms describing "action." If a business wanted to borrow money from a bank for real property, etc. usually they would have a loan for the property and a loan for the equipment. The real property could be filed under Title 71 and the equipment under the UCC. Then perhaps the business does not survive and the financing institute can only sell the real property even though they have a lien on both. They would have to take a separate action in order to sell the equipment. Sometimes this causes the foreclosure to go on for over year or two.

**Proponents' Testimony:**

**George Bennett, MT Bankers Assoc.,** rose in support of **SB 232.**

**EXHIBIT(jus21a01)**

**John King, First Security Bank of Kalispell, MT Independent Bankers,** turned in testimony in favor of **SB 232.**

**EXHIBIT(jus21a02)**

**Bob Pyfer, MT Credit Union League,** said this will help facilitate the lending process. He passed out a friendly amendment.

**EXHIBIT(jus21a03)** He said because credit unions are member owned cooperatives, they don't have deposits, they have shares and the amendment would take care of this.

**{Tape : 1; Side : A; Approx. Time Counter : 9:18 a.m.}**

**Don Bennett, First Citizens Bank**, said when they are doing a loan to start up a business, many times they will use SBA guarantees to reduce the amount of risk on a loan. He used the example of a borrower wanting to start a business and borrows \$200,000. They put \$50,000 down of their own working capital, \$100,000 of that borrowed money is for the purchase of real estate, etc. and the other \$100,000 is for the purchase of equipment, etc. The question comes in is if the business doesn't work then the bank has an option. They can go through a judicial foreclosure which is very lengthy and costly. The small track financing act was put in place so that lenders would be able to foreclose on a lien in real estate. The problem comes in when the one action rule is mixed with a single action rule. He used the example if a borrower is defaulting on a loan and the bank gives the borrower more time. Then if the borrower still can't make the payment and the bank comes to foreclose and the borrower says no, the bank has to make a choice. If the bank starts a lawsuit to take some of the collateral which is considered an action, the bank may not have any rights to sell the real estate. They do not want to change the intent of any of the original laws, they simply want to clarify an action and know what their rights are.

**Doug Morton, Bankwest**, rose in support of **SB 232**.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. RIC HOLDEN** referred to **(EXHIBIT 2)**. He asked how will this facilitate the lending process. **John King** used the example of a farmer or rancher who comes in for a line of credit. They can get a feeder line loan, general operating loan, mortgage loan or an equipment loan, which could constitute up to four different notes to the borrower. The operating loan and the feeder line loan are less than a year's time. Therefore, these two notes could go together. The equipment loan would stand by itself unless it is being used for 3-5 years and can be tucked into the mortgage loan. There is no reason why the equipment can't be in the mortgage, because that equipment is used all the time and it is being updated in about 5 years with new equipment. By only having two notes the bank and the borrower know exactly what they have. The way it is now they have four notes and everything is cross-collateralized and it is confusing.

**SEN. WALTER MCNUTT** referred to **(EXHIBIT 2)**. He said in his business he has real estate and a large inventory. He asked if this was all on one security agreement and at what point could he get the inventory released from that lien or will it stay there for the term of the loan. **John King** said if the borrower comes

back in a three year period and asks to have the inventory released, the bank would probably release the inventory at that time. The most important time that they look at this is if they have a new borrower and are formulating a new business and they really cannot determine their cash flow. This gives them a better chance of surviving. Usually only one out of 10 survive the first year of a new business.

**SEN. MCNUTT** asked what if the borrower comes in and says he doesn't want his mortgage and inventory tied together. Can the borrower still make this request. **John King** said it doesn't do anything to this request. The seven C's of credit are the most important things with the payment of debt, etc. also being important.

**CHAIRMAN LORENTS GROSFIELD** asked Bill Landon what his opinions where? **Bill Landon, Attorney**, said the purpose of the one action rule is to require a creditor, when a loan gets in distress, to proceed with foreclosure before going after the general assets of the borrower. This is to prohibit a creditor from getting double recovery. This bill is drafted similar to legislation that has happened in Idaho and Nevada. It merely clarifies the type of conduct that constitutes an action for the purposes of the rule. There are 18 items of numerated conduct which the amendments say do not constitute an action and are consistent with modern day collection practices. None of them will permit a creditor to just go out and chase the debtor's assets.

**SEN. REINY JABS** referred to **(EXHIBIT 2)** and said there is some confusion here. **Bill Landon** said the examples in **(EXHIBIT 2)** are cross-collateralized and is the bargain between the lender and the borrower. This amendment does not affect cross-collateralization at all. Three different loans can have three different mortgages and stand alone, but most are cross-collateralized. This act would simply say that if one loan is in default and the creditor is going to proceed that there are a number of things that the creditor can do, all of which are related to the enforcement of mortgage remedies.

**{Tape : 1; Side : A; Approx. Time Counter : 9:41 a.m.}**

**SEN. MCNUTT** referred to **(EXHIBIT 2)**. He said he was under the impression that one action would require one security agreement. If the note had been paid down and he wanted his inventory free and clear, how would he get that done. Does the example of Mr. King's really apply in **(EXHIBIT 2)**. **Bill Landon** said the example does reflect what often happens in an agricultural scenario. There is nothing in the one action rule as it exists that would require that everything be put under one loan. If a producer came

in and wanted to renew their operating line of credit there are a couple of ways that can be done. It can be done with a separate security agreement, or under two notes that are cross-collateralized. If there is a foreclosure, this act would make it clear that all of the collateral gets brought into one action.

**CHAIRMAN GROSFIELD** said there is only one action for recovery of debt and why was this ever done in the first place. **Bill Landon** said it is a product of field code. Its purpose was if a creditor and a borrower sit down and they negotiate a secured transaction and that loan gets into trouble, it precedes against the collateral first.

**CHAIRMAN GROSFIELD** asked if they aren't going from one action to 18 and from the borrowers perspective they could get hit in 18 different ways. **Bill Landon** said it would probably never happen like that. He said if a loan gets in trouble right now under the uniform commercial code, there is personal and real property and the rules don't fit together. Right now the bank could go out and repossess the car. If they wanted to get court assistance to get that car that would constitute as an action and then this results in a waiver of real estate collateral. But if they don't get a judgement from the courts, it is not considered an action. This one action rule does apply to deeds of trust which are foreclosed non-judicially. And this is not an action for the purpose of the rules, etc.. If one looks at the 18 components, they relate to a provision type of remedy that is related to foreclosure remedies. This will also help in multi-state loans, etc..

*{Tape : 1; Side : B; Approx. Time Counter : 9:55 a.m.}*

**SEN. SUE BARTLETT** asked if there had been any cases in Montana that have dealt with this. **Mr. Landon** said no. He explained some small cases that may deal with this, but there are none at the Supreme Court level in Montana.

**SEN. AL BISHOP** said he has foreclosed on hundreds of mortgages and he never thought this referred to just one action, but to one type of action. How could he get away with that. **Mr. Landon** said it is very complicated, the one action rule does say there is only one action. But concerning real estate this is often not the case as mortgage loans are also secured by personal property and one action is difficult in this area.

**SEN. BISHOP** said if there is a mortgage on real estate and personal property has secured interest in that then will they have to choose which one to do. **Bill Landon** said presently, they can foreclose it all on one lawsuit and there is only one action.

This would permit them to use the UCC with different remedies before having to deal with the one action rule.

**SEN. MCNUTT** said what if they have a real estate mortgage and the personal guarantee is represented by an investment portfolio, etc. He asked if they would have to foreclose on the real estate to satisfy the foreclosure or can that be taken out of the investment portfolio. **Bill Landon** said any standard guaranteed agreement is a completely independent obligation. If it is not secured by the real estate collateral it won't be. But under this amendment a lender could proceed against that guarantee. A guarantee is a completely independent obligation. A lender should be able to proceed against the guarantor under that example.

**Closing by Sponsor:**

**SEN. DEPRATU** said it is important that financial institutions and businesses in the agriculture community have an understanding of procedures. It is important to keep capital available to the community and for financial institutions to protect their collateral when they have to.

*{Tape : 1; Side : B; Approx. Time Counter : 10:08 a.m.}*

**HEARING ON SB 36**

**Sponsor:** SEN. BOB KEENAN, SD 38, Bigfork

**Proponents:**

Monte Jones, Salvation Army  
Steve Stangart, Touch of Grace Health Center  
Jerry Loendorf, MT Medical Assoc.  
Mary McCue, MT Academy of Family Physicians  
Jim Ahrens, MT Hospital Assoc.  
Steve Pilcher, MT Dental Hygienist Assoc.  
Todd Thun, MT Nurses Assoc.

**Opponents:**

Al Smith, MT Trial Lawyers Assoc.  
Rebecca Moog, MT Women's Lobby

**Informational Testimony:**

Michael Spence, Self

**Opening Statement by Sponsor:**

**SEN. BOB KEENAN, SD 38, Bigfork,** passed out some Virginia State Law on this process. **EXHIBIT(jus21a04)** He said, currently, in Montana there is no protection for medical professionals other than dentists against malpractice lawsuits when they volunteer their services. They would like to be able to provide some protection for these volunteering doctors, etc. He said free health clinics are living their mission by providing services without economic discrimination. This bill doesn't offer blanket immunity. He said there has been some proposed amendments to get the dental hygienists on this bill and a written waiver to have patients sign to clarify this.

**SEN. HALLIGAN** took over the chair.

**Proponents' Testimony:**

**Monte Jones, Salvation Army,** said last year they started a free medical clinic where they offer access for nurses and doctors who are willing to volunteer their time. No one is ever turned away from the clinic regardless of whether they meet financial guidelines or insurance. They see approximately 100 people per month and they are also working to get prescription drugs at a reduced cost. He said 90 percent of the people that they help are not couch potatoes, they are people that are working and trying to make ends meet and they have no medical insurance. He gave an example of what a parent goes through when they don't have insurance. He said his sister had a baby when she was 16 years old. When his niece was three, she became very ill and no doctor would see them because they had no insurance. They took her to the emergency room, where even though it says they cannot deny service, they were denied. He said after two days of suffering they finally took her back to the emergency room and they helped her. He said one hour of service cost them over \$600 and it took him over 6 months to pay the bill. A lot of people though, would not pay those bills, and then the hospital has to absorb that cost. He said there is dispute on this bill though in that everyone should have protection under the law regardless of their financial situation. He agrees with that, but there should be the same thing for medical attention. Everyone should have protection and access to medical attention under the law. There are solutions by having these free clinics, but the doctors, etc. need to be protected to provide their services. He said they are not trying to protect them from gross negligence. This will help them in situations where they are not liable. If the client does not take care of the ailment like the doctor prescribed then this is not the doctor's fault. He said they can't help everyone who walks through the door of their clinic, but they can refer them

to agencies that can help. If doctors can't be protected that give their time, these clinics will end up failing and the cost will come back to the public.

**CHAIRMAN GROSFIELD** took over the chair.

*{Tape : 1; Side : B; Approx. Time Counter : 10:23 a.m.}*

**Steve Stangart, Touch of Grace Health Center**, said there are several retired doctors in their community that would love to provide their services, but they can't, because they no longer have \$20,000 worth of malpractice insurance. This bill will also allow them to do some high risk procedures that they can't do right now. He said they have a young man who has a brain tumor and they can't do those types of procedures at their clinic, but nobody else will take him because of the liability and he has no insurance.

**Jerry Loendorf, MT Medical Assoc.**, said there is some concern that this bill is too broad. Someone could walk into a doctor's office and if something goes wrong they could claim immunity under this bill. An amendment that they had in the public health committee would of tightened those things up. The first thing is that for a person to qualify for immunity the person had to be a patient of one of these free clinics and this would follow them to whatever site they might be referred to for services. Service must always be provided without compensation and this is for both the clinic and the provider. The amendment also defines a clinic. **EXHIBIT(jus21a05)**

**Mary McCue, MT Academy of Family Physicians**, spoke in behalf of Jay Erickson and handed in testimony. **EXHIBIT(jus21a06)**

**Jim Arhens, MT Hospital Assoc.** said it would be helpful if they could use some of their retired doctors.

**Steve Pilcher, MT Dental Hygienist Assoc.**, said this bill attempts to provide limited protection for those who choose to volunteer their professional skills for the benefit of those that would go without the attention of medical needs. The Dental Hygienist Assoc. would like to take advantage of this opportunity to clarify that they be covered under this bill also.

**Todd Thun, MT Nurses Assoc.**, said they support this bill.

*{Tape : 2; Side : A; Approx. Time Counter : 10:37 a.m.}*



Opponents' Testimony:

**Al Smith, MT Trial Lawyers Assoc.**, stood in opposition of **SB 36**.  
**EXHIBIT**(jus21a07)

*{Tape : 2; Side : A; Approx. Time Counter : 10:46 a.m.}*

**Rebecca Moog, MT Women's Lobby**, said doctors need to be responsible and accountable for their actions. Doctors already have malpractice insurance that protects them. She said just because someone is poor, doesn't mean they should lose their legal rights.

Questions from Committee Members and Responses:

**SEN. MCNUTT** asked if this is a solution to a problem then why are the trial lawyers against this bill. Is this dollars for trial lawyers or is this good medical practice for the state. **Al Smith** said the problem is that these free health clinics cannot operate without this immunity, but they are operating right now. The trial lawyers cannot just go out and file a suit for them to make money, someone has to come to them that needs representation. If this bill doesn't pass, it still doesn't deny people access to these health clinics.

**SEN. MCNUTT** asked how are they precluding suits by the language of this bill. **Al Smith** said this bill doesn't totally preclude suits in such instances of gross negligence. But it does preclude suits where there is simple negligence.

**SEN. MCNUTT** asked if they want simple negligence then will they have the right to file a suit if they kind of, sort of, think they did it. **Al Smith** said no, this is not the point. If a doctor recommends some treatment at a clinic and the patient leaves the clinic and they never follow up on the treatment, that is not a negligence suit.

**SEN. DOHERTY** asked, can they have malpractice coverage through the clinic for those professionals who are donating their services. **Jerry Loendorf** said he would assume the clinic would buy it, if they could afford it. This is a judgement of each clinic, as to if they want to do this.

**SEN. DOHERTY** asked what has been done to put the squeeze on insurance companies to have reduced rates for retired practitioners. **Jerry Loendorf** said they can't put the squeeze on an insurance company.

**SEN. DOHERTY** asked when the no compensation factor comes in, would they object to an amendment that says that compensation has to be agreed upon in the beginning that there will be no payment, etc..

**Jerry Loendorf** said what they proposed is that the person had to be a patient of the clinic from the beginning and it has to be a free clinic.

**SEN. DOHERTY** said what about the argument that they are creating two classes of people. The poor people that have to go to a free clinic are going to get one standard of care with access to the courts. And those who have health insurance get another standard.

**SEN. KEENAN** said these people are volunteering to go to these clinics. The clinic could purchase insurance, but it would reduce the services that they could give to people. He said he doesn't know how to answer the question of creating two classes of citizens here.

**SEN. DOHERTY** asked if a person goes into a Monday night clinic and the retired physician can't do the procedure, would they get referred to a specialists. **Jerry Loendorf** said that was correct.

**SEN. DOHERTY** asked how many hospitals grant privileges for physicians to do anything, who don't carry malpractice insurance. **Jerry Loendorf** said he was sure none of the major ones would, but perhaps minor hospitals do.

**SEN. DOHERTY** asked if they could focus this on patients who will be referred to physicians who have full protection. **Jerry Loendorf** said this is a possibility. The language could be that if there is a doctor that has insurance coverage there would not be immunity.

**CHAIRMAN GROSFIELD** said he would take informational testimony.

**Informational Testimony:**

**Michael Spence, Self**, said he ran a night free clinic with his students for a teaching aide. He said he does not feel that these patients received any different type of care than if they went to a regular doctor. He said he has deleted about \$35,000 worth of malpractice insurance since retiring. He has worked for other physicians where there was the agreement that his professional liability insurance would be covered and this is important. Everyone is subject to make an error and people can be harmed. He said by the same token as a retired physician he cannot pay the insurance, but would still like to keep up his skills.

**SEN. BARTLETT** said the clinic in Helena provides services on a sliding scale and is it true that some people with no resources are provided free care. **Kip Smith, MT Primary Care Assoc.**, said that was correct.

**SEN. BARTLETT** asked if the people that work at the clinic are compensated for their time. **Kip Smith** said that was correct.

**SEN. BARTLETT** discussed the amendment. **(EXHIBIT 5)** She said the language needs to address compensation from the patient. She said she would assume that the providers at the clinic have malpractice coverage. She said the way the amendment is worded there may be instances where the doctor may not be liable for negligence. **Kip Smith** said in the bill the language is confusing as to whether these centers are covered or not, but it is even more confusing with the amendment. **Michael Spence** said he has talked to the clinic in Helena about donating his time. He said at the current time the clinic carries a policy that anyone working there, under any capacity, is covered against liability action. He could work there without compensation and still be covered.

**SEN. BARTLETT** said if this passed, and there was simple negligence would the insurance company still cover this. **Jerry Loendorf** said immunity would be a defense, but the clinic in Helena would not fall under this bill because the people that work at the clinic are paid a salary. This only applies to those who work without compensation.

**CHAIRMAN GROSFIELD** said in the amendment what is the significance of the word "voluntarily". **Jerry Loendorf** said this comes from the Virginia Law and he doesn't know why it is there.

**CHAIRMAN GROSFIELD** said in the last session they granted broad immunity to dental surgeons, etc. He asked if this has been used. **Jerry Loendorf** said this was for a project in Missoula and he was not familiar with it.

**Closing by Sponsor:**

**SEN. KEENAN** closed in **SB 36**.

*{Tape : 2; Side : A; Approx. Time Counter : 11:11 a.m.}*

**HEARING ON SB 236**

**Sponsor:** **SEN. STEVE DOHERTY, SD 24, Great Falls**

**Proponents:**

**John Connor, MT Co. Attorney's Assoc.**  
**Jon Metropoulos, Flathead Joint Border Patrol for three**  
**Irrigation Districts**

**Opponents:**

**Arlette Randash, Eagle Forum**  
**Laurie Koutnik, MT Christian Coalition**  
**Scott Crichton, ACLU**

**Opening Statement by Sponsor:**

**SEN. STEVE DOHERTY, SD 24, Great Falls,** said they have seen the rise of para-military organizations and the threats that they have acted out. This bill is an attempt to clarify existing law. He said, currently, they have a criminal syndicalism law in Montana and is subject to interpretation in court cases. A judge in Missoula recently ruled that this current statute was not up to Constitutional muster. He said the U.S. Supreme Court has dealt with this and *Brandenburg v. Ohio* is one such case dealing with the Klu Klu Klan in which this statute was used. He said they used language from that case in this bill. He said the current statute is too broad as it could infringe on free speech and might give prosecutors too much power. This draws the line between inciting unlawful activity and producing that unlawful activity in simple free speech. They have to look at the context of the speech, just like they do in sexual harassment cases.

**Proponents' Testimony:**

**John Connor, MT Co. Attorney's Assoc.,** said this bill is the same as they had last session and is simply bringing Montana statute up to Federal Law. The crux of this bill is on lines 24-26, page 1. This bill doesn't grant any more than what they have now by existing statute, in fact it narrows what they can do. This criminal syndicalism statute dates back to 1917 and is being used now to prosecute anti-government related activities. He discussed some cases that dealt with these issues. This is only trying to bring this up to Constitutional muster and not enlarge the scope of what might be prosecuted under the statute. He is willing to work with the language, as long as the *Brandenburg* language stays in there.

**Jon Metropoulos, Flathead Joint Border Patrol for three**  
**Irrigation Districts,** said his clients are located within the exterior boundaries of the Flathead Indian Reservation and they

find themselves in conflict with these tribes. He said four years ago the tribe sued the officers of his irrigation district. Claiming they were racketeers and had violated criminal laws for exercising their first amendment rights to lobby, administer actions at the state and federal level and to participate in lawsuits. The tribes lost twice to the federal district court in Helena and appealed to the 9th Circuit Court of Appeals where they lost again. His clients had to spend over \$70,000 defending themselves. The damages that the tribes sought was over \$3 Million. The theory of this was that his clients had exceeded their authority under state civil law and in doing so they had conducted unlawful activity. He said the state's County Attorneys would not improperly use this statute, but political opponents may use this to quiet the free speech of their opponents. He said on line 13 the definition of criminal syndicalism should be inserted into the bill and methods of terrorism should be struck. Line 24, the word "unlawful" should be changed to "criminal action". Line 26, the definition of imminent needs to be changed so that they are talking about imminent of time.

***{Tape : 2; Side : B; Approx. Time Counter : 11:30 a.m.}***

**Opponents' Testimony:**

**Arlette Randash, Eagle Forum**, said free speech protections could be dissolved if a different political climate would arise. She said their forefathers recognized the difficult balance of the right to free speech and the necessity to state security. The reason the framers of the Constitution defined the crime of treason in the Constitution itself was not because of the gravity of the crime alone, but due to the abuses which had surrounded prosecutions for treason. They wanted the crime to consist only of the conduct specifically described in the Constitution. She read part of the Constitution which defines treason. The balance they sought between freedom of speech and the nation's security was clearly affected by historical events. Rise of socialism and political upheaval led to the enactment of many of the states syndicalism laws which in turn became the basis of the Smith Act. Current political events are driving this bill as it did SB 178 in the previous session. They should provide protection for civil service and law enforcement, but overreacting and suspending constitutionally guaranteed freedoms will also serve just as well to ultimately undermine our freedom. This bill raises the question, is the language unconstitutionally vague since one would be guilty without having committed an overt act. The Smith act is aimed at the advocacy and teaching of concrete actions for the forcible overthrow of the government and not the advocacy of principles divorced from action. **SB 236** mentions nothing about overthrowing the government only unlawful actions or the

likelihood of unlawful actions. Wasn't this what our forefathers wanted to avoid? Prosecutions under the Smith Act fall under federal jurisdiction and courts and is a state statute necessary? Proponents of this bill have not shown proof that they have been able to bring to justice one criminal guilty of what they are labeling incitement. The Smith Act specifically proscribes conspiracy of two or more persons but **SB 236** talks about one person. She discussed the Brandonberg V. Ohio case.

**Laurie Koutnik, MT Christian Coalition**, said the first time she had ever heard of anyone being prosecuted of a criminal syndicalism law was back in 1995. Those charges were dropped because they were too vague and this is the problem with the bill. Just because they replace the word "syndicalism" with the word "incitement" does not address the core of the judges concern. This bill is too vague and borders on infringement of our Constitutionally protected first amendment rights. She wondered if our forefathers would of been guilty for speaking out on unjust taxation, etc. if this law was in place. She wondered what impact this legislation would have on our right to influence public policy or conduct. She read Article 2, Section 30 of the Montana Constitution. She said there are several laws already in statute that protect people and prosecute criminals and this bill is not needed. She said the Freeman have been brought up on charges and are being sentenced. She questioned as to whether the County Attorneys need another law to enforce. She cited several cases that have been challenged unconstitutional by the U.S. Supreme Court.

**Scott Crichton, ACLU**, rose in opposition of **SB 236**.

**EXHIBIT(jus21a08)**

**Questions from Committee Members and Responses:**

**SEN. HALLIGAN** asked what happened in Cascade County with the mayor situation. **SEN. DOHERTY** said the mayor was charged with the act that they are trying to amend. The prosecutor knew he may have problems prosecuting him under this statute because it had problems.

**SEN. HALLIGAN** asked if there is any other state that has something similar to this. **John Connor** said he didn't know if other states have acts that are defined this way. There is nothing they are trying to do here except limit this. And if there was potential abuses under this statute they would of surfaced by now.

**SEN. HALLIGAN** asked if changing unlawful to criminal on line 25 and the imminent definition of time is favorable. **John Connor**

said this is agreeable. The word imminent comes from case law but the definition of time is important.

**SEN. JABS** asked how could this be challenged. **John Connor** said anytime they charge someone under any statute it is subject to being challenged. He said they are trying to make it conform with what the U.S. Supreme Court says is permissible to limiting advocacy.

*{Tape : 2; Side : B; Approx. Time Counter : 11:56 a.m.}*

**SEN. HOLDEN** asked wouldn't it make more sense to repeal this statute and prosecute people under other statutes that have held up in a court of law. **SEN. DOHERTY** said prosecutors need this opportunity to prosecute under this law and there is no Constitutional problems with this bill, but there are Constitutional issues which need to be addressed. He said standing on the street corner and saying the Legislature is made up of a bunch of fools is great political speech. But standing on the street corner with a baseball bat and telling your friends lets go beat up the Legislature because it is a bunch of fools is where they cross the line. The Supreme Court is addressing this also.

**SEN. HOLDEN** said the example he just gave is already covered under current law. You cannot threaten, harass or do harm to public officials. **SEN. DOHERTY** said what about the neighbors across the street.

**CHAIRMAN GROSFIELD** asked if 45-8-104 covers this in the case of riots. **John Connor** said riots are under the misdemeanor statute. Sometimes they need other ways to prosecute and this criminal syndicalism law is the only option. As prosecutors they always look at what is available to specifically address the conduct involved.

**CHAIRMAN GROSFIELD** said what if he is an "earth firster" and he is taking people out to spike trees, is this the statute he would be prosecuted under. **John Connor** said if it falls within those subsections it would be covered.

**CHAIRMAN GROSFIELD** asked if there was another statute he could be prosecuted under. **John Connor** said it depends on the facts. There could also be criminal mischief involved in this.

**SEN. HALLIGAN** asked if overt acts would make it clearer. **John Connor** said he would have no problem with that.

**CHAIRMAN GROSFIELD** said if they do the changes that have been suggested does the ACLU change their position. **Scott Crichton** said one other area would have to be specifically addressed, and that is the unlawful act being charged which they are inciting, is the act which is inflicted. He said there is no linkage in the way the language is written. He said there is examples of what people are being encouraged to do is not at all what human beings end up doing. He said he cannot speak for the whole board on this matter as to whether they would be in favor of this.

**CHAIRMAN GROSFIELD** asked the same question of Arlette Randash. **Arlette Randash** said she was not sure until looking at the language that has been proposed.

**Closing by Sponsor:**

**SEN. DOHERTY** said he would have to reserve his thoughts on linkages. He said they have a current syndicalism law and it could be abused by prosecutors, but it has not. There is the question as to if the law would be held Constitutional if used right now. In order to solve that problem they are tracking the language from the Brandonberg decision. This bill is not a threat to anybody's rights, it is an attempt to prevent needless litigation. This bill addresses only when people cross the line.



**ADJOURNMENT**

Adjournment: 12:10 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JODI PAULEY, Secretary

LG/JP

**EXHIBIT** (jus21aad)